

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 12564 of 2004****For Approval and Signature:****HONOURABLE MR. JUSTICE H.K.RATHOD**

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the

4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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KANDLA PORT & DOCK SC/ST EMPLOYEES UNION - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :

MR TR MISHRA for Petitioner(s) : 1,
MR UT MISHRA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR ALPESH RAJPURIYA for Respondent(s) : 2,
MR DC DAVE for Respondent(s) : 3,

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CORAM : HONOURABLE MR. JUSTICE H.K.RATHOD**Date : 14/02/2006****ORAL JUDGMENT**

1. Heard learned Advocate, Mr.U.T.Mishra appearing on behalf of petitioner, learned Advocate, Mr. Alpesh Rajpuriya appearing for respondent No.2 and Mr.D.C.Dave appearing on behalf of respondent No.3 and no one remain present on behalf of respondent No.1 whose order is under challenge by the petitioner. In the present petition, the petitioner has challenged the order passed by respondent No.1, which is at Page No.16 wherein appropriate Government by order dated 24th July 2002 refused to refer the industrial dispute, which was raised by the petitioner-Union for adjudication to the concerned Industrial Tribunal. The reason given by appropriate Government-respondent No.1 is that "The workmen involved in the dispute were not appointed either by Kandla Dock Labour Board or by Kandla Stevedores Association". This order has been passed by appropriate Government while exercising power under Section 12 sub-section (5) of the Industrial Disputes Act, 1947. The appropriate Government has received the Failure of Conciliation of Report dated 02nd February 2002 from

ALC, Adipur, Kutch. The appropriate Government has considered the Failure of Conciliation of Report and prima facie came to a conclusion that industrial dispute is not fit for adjudication for the reasons as referred above.

2.Learned Advocate, Mr.U.T.Mishra appearing on behalf of the petitioner submitted that appropriate Government while exercising power under Section 12 sub-section (5) read with Section 10 of the Industrial Disputes Act, 1947, has no jurisdiction to decide merits of the industrial dispute, which has been raised by the petitioner. The question of adjudication is for the Tribunal to examine it once the dispute is referred for adjudication. In short his submission is that appropriate Government committed gross error in deciding the industrial dispute, which was raised by the petitioner. He relied upon the decision of Apex Court in 1989 II LLJ Page No.558 in case of Telco Convoy Drivers Mazdoor Sangh and another V/s. State of Bihar and others. The second decision is of Division Bench

of Bombay High Court in 2004 III LLJ Page No.930 in case of Venugopalan Nair B. V/s. Union of India and others. The third unreported decision is of Division Bench of this Court (Coram : Hon'ble Mr. Justice R.K.Abichandani and Hon'ble Mr. Justice K.M.Mehta,JJ) in case of Manubhai B. Makwana V/s. Union of India in Letters Patent Appeal No.1031 of 1996 in Special Civil Application No.4230 of 1996 dated 10th November 2003. The fourth unreported decision is of Learned Single Judge of this Court (Coram : Hon'ble Mr. Justice Jayant Patel,J) in case of Oil Natural Gas Corporation Labour Union V/s. Union of India in Special Civil Application No.13329 of 2003 dated 17th March 2004. Mr. Mishra relying upon these four decisions submitted that identical question has been examined by this Court as well as Apex Court that while examining prima facie under Section 12 sub-section (5), the appropriate Government has no jurisdiction to decide merits of the industrial dispute raised by petitioner-Union. The Apex Court has discussed this aspect in Telco Convoy Mazdoor Sangh. The

learned Advocate, Mr. Alpesh Rajpuriya appearing on behalf of respondent No.2 as well as learned Advocate, Mr.D.C.Dave appearing for respondent No.3 raised contention that it is within jurisdiction of appropriate Government to consider before referring the matter prima facie, whether the industrial dispute is exist or not? And therefore, appropriate Government has rightly refused to refer industrial dispute for that appropriate Government has not committed any error.

3.I have considered the submissions made by both the learned Advocates and also considering the decision, which has been relied upon by Mr. Mishra and considering the fact that whether workmen are employed by Kandla Dock Labour Board or Kandla Stevedores Association Ltd. is a question of fact to be examined by the Tribunal. After the dispute is raised for adjudication, such question of facts raised in industrial dispute cannot be decided by the appropriate Government while exercising power under Section 10 of Industrial Disputes Act, 1947.

This aspect has been considered by the Apex Court in Telco Convoy Drivers Mazdoor Sangh and others reported in AIR 1989 SC Page No.1565. The relevant observations at Paragraph Nos.11, 14 and 16 are quoted as under:-

"11. It is true that in considering the question of making a reference under Section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a reference should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is, undoubtedly not permissible.

14. Applying the principle laid down by this Court in the above decisions, there can be no doubt that the Government was not justified in deciding the dispute. Where, as in the instant case, the dispute is whether the

persons raising the dispute are workmen or not, the same cannot be decided by the Government in exercise of its administrative function under Section 10(1) of the Act. As has been held in M.P. Irrigation Karamchari Sangh's case (supra), there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and that to allow the Government to do so would be to render Section 10 and Section 12(5) of the Act nugatory.

16. It has been already stated that we had given one more chance to the Government to reconsider the matter and the Government after reconsideration has come to the same conclusion that the convoy drivers are not workmen of TELCO thereby adjudicating the dispute itself. After having considered the facts and circumstances of the case and having given our best consideration in the matter, we are of the view that the dispute should be adjudicated by the Industrial Tribunal and, as the Government has persistently declined to make a reference, under Section 10(1) of the Act, we think we should direct the Government to make such a reference. In several instances this Court had to direct the Government to make a reference under Section 10(1) when the Government had declined to make such a reference and this Court was of the view

that such a reference should have been made. See Sankari Cement Alai Thozhiladar Munnetra Sangtam v. Govt. of Tamilnadu, (1983) 1 Lab LJ 460; Ram Avtar Sharma v. State of Haryana, (1985) 3 SCR 686 : (AIR 1985 SC 915); M.P. Irrigation Karamchari Sangh v. State of M.P., (1985) 2 SCR 1019 : (AIR 1985 SC 860); Nirmal Singh v. State of Punjab, (1984) 2 Lab LJ 396 : (AIR 1984 SC 1619)."

4. In view of the above observations made by Apex Court and considering the fact of this case and considering other decisions relied by Mr. Mishra, according to my opinion it is beyond jurisdiction of appropriate Government to examine that whether workmen concerned have involved in the dispute were appointed by Kandla Dock Labour Board or by Kandla Stevedores Association Ltd. or another company? This question of fact can be examined by Industrial Tribunal after giving reasonable opportunity to the respective parties and after production of necessary material on record. Such decision of appropriate Government, which has to consider only whether Industrial Tribunal is exist or not? If Industrial dispute is exist, then it is beyond jurisdiction of appropriate Government to decide

the dispute between the parties while exercising power under Section 10 of Industrial Disputes Act, 1947, therefore, order passed by appropriate Government-respondent No.1 dated 24th July 2002 Annexure 'C' Page No.16 of the petition is required to be quashed and set aside.

5. In the result, the present petition is allowed. The order passed by appropriate Government-respondent No.1 dated 24th July 2002 is hereby quashed and set aside with a direction to respondent No.1 to reconsider the matter in light of the decision referred in the petition and to pass appropriate order while exercising power under Section 10 of the Industrial Disputes Act, 1947 within a period of three months' from the date of receipt of writ of this order. Accordingly, Rule is made absolute. No order as to costs.

(H.K.RATHOD, J.)

mrpandya*